

**IT IS ORDERED as set forth below:**



**Date: August 03, 2007**

*James E. Massey*

James E. Massey  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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IN RE:

CASE NO. 06-68960

Ronald M. A. Shuffler,

CHAPTER 13

Debtor.

JUDGE MASSEY

\_\_\_\_\_  
Ronald M. A. Shuffler and Romans Ads, LLC  
d/b/a Central Perk,

Plaintiffs,

v.

ADVERSARY NO. 07-6282

United Brotherhood of Carpenters and Joiners of  
America, Southeastern Carpenters Regional  
Council,

Defendant.

ORDER GRANTING MOTION TO DISMISS

Plaintiff and Debtor Ronald Shuffler is the sole member of Plaintiff Romans Ads, LLC  
d/b/a Central Perk, which operates a restaurant business on the ground floor of a multistory office

building located at 10 Tenth Street, Atlanta, Georgia on the Northeast corner of Tenth Street and West Peachtree Street. According to Plaintiffs, Defendant, a labor union, is presently picketing a contractor working on space in the 10 Tenth Street building occupied by an unrelated entity. Plaintiffs have no connection to Defendant, the contractor or the entity for which the contractor is doing work.

Plaintiffs allege that Defendant's members are picketing immediately outside the West Peachtree Street entrance to the building near the restaurant and are thereby driving away restaurant customers. They further allege that the business of the restaurant is being destroyed, and as a result Debtor is unable to fund his Chapter 13 plan obligations. Plaintiffs contend that Defendant's conduct violates the automatic stay imposed by 11 U.S.C. § 362(a), and they seek injunctive relief to end the alleged stay violation.

The Court conferred by telephone with the attorneys for the parties in mid-June 2007. In that conversation, the Court suggested that the picketing might be done effectively some distance away from the front of the building, and the parties agreed to meet to attempt to work out the suggested solution. At the hearing on Plaintiffs' motion for a temporary restraining order held on June 21, the parties indicated that they had made progress on an agreement and needed more time. Unfortunately, Plaintiffs have since filed a report asserting that the business continues to suffer due to the picketing, which they contend is not being conducted as the parties had agreed.

On June 20, 2007, Defendant moved to dismiss this adversary proceeding in effect for failure to state a claim for relief, contending that the Norris-LaGuardia Act, 29 U.S.C. §§ 101-115 deprives federal courts of jurisdiction to enjoin Defendant from picketing. Plaintiffs contend that there is no labor dispute insofar as they are concerned and hence the Norris-LaGuardia Act is not implicated.

Section 362(a) provides:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
- (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

The picketing being conducted by Defendant is not one of the acts prohibited by section 362(a). Defendant is not employing process against Mr. Shuffler, is not attempting to enforce a judgment against him, is not attempting to obtain possession or control of estate property or to exercise control over estate property, is not attempting to create, perfect or enforce a lien against property of the estate or of Debtor, is not attempting to collect a claim against Debtor, is not attempting to offset a debt owing to Debtor and is not proceeding against Debtor in the U.S. Tax Court.

Plaintiffs have not alleged facts to show that the picketing is an act “to exercise control over property of the estate,” which is the only part of section 362(a) that remotely might apply under the proper facts. The restaurant and its assets are not property of Debtor’s estate; the estate property is Mr. Shuffler’s membership interest in Romans Ads.

Although the protection of the automatic stay has in rare instances been extended to non-debtors, usually in the context of protecting essential non-debtor officers from suit while the debtor is reorganizing, there is no statutory basis for extending the stay in Mr. Shuffler’s case to protect Romans Ads, LLC from the consequences of picketing. *Cf. Reliant Energy Servs., Inc. v. Enron Canada Corp.*, 349 F.3d 816, 825 (5<sup>th</sup> Cir. 2003).

The relief sought in the complaint is based on an alleged violation of the automatic stay. Because the facts alleged in the complaint, construed in a light most favorable to Plaintiffs, do not constitute a violation of any part of section 362(a) of the Bankruptcy Code, the complaint fails to state a claim upon which relief can be granted. Even if the restaurant’s assets were estate property, Plaintiffs do not allege facts showing that by picketing, Defendant is exercising control over the assets of the restaurant. The import of the complaint is merely that the picketing is discouraging some potential customers from frequenting the restaurant.

In opposing the motion to dismiss, Plaintiffs assume a violation of the automatic stay and cite cases that address the question of whether the Norris-LaGuardia Act trumps section 362. Because Plaintiffs have not alleged facts that would constitute a violation of the automatic stay in this Chapter 13 case, the cases on which Plaintiffs rely are inapposite. Hence, the Court does not reach Defendant’s contention that the Norris-LaGuardia Act prohibits the enforcement of the automatic stay with respect the alleged activities of Defendant in picketing adjacent to the

entrance to Romans Ads's restaurant, except to point out that the facts alleged in the complaint are insufficient to state a claim for secondary picketing or secondary boycotting in violation of 29 U.S.C.A. § 158(b)(4)(B).

For these reasons, Defendant's Motion to Dismiss is GRANTED, although on a different ground than the one advanced by Defendant.

\*\*\*END OF ORDER\*\*\*